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PROFESSIONALISM *v.* COMMERCIALISM

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The profession of the law is marked by certain interesting and distinctive peculiarities whose importance and significance deserve to be emphasised. Herein, I shall refer to some of these features relevant to the caption of this essay. It is also well that, on the eve of the Diamond Jubilee of the premier Advocates' Association of Madras, the ideals in this regard, for which the profession stands, are re-affirmed so that its members may keep clear of this worst and most besetting temptation of commercialism. Otherwise, we would not only be justifying the sneers which are lightly hurled at us, but would also be bringing the law itself into deserved contempt.

Ordinarily, the employment of any service results in making the servant owe his duty wholly to his employer. It may seem paradoxical, but it is nevertheless true, that in the employment of legal service the paramount allegiance of the lawyer is due not to his client but to the law. Chief Justice Gibson said, "It is a popular but gross mistake to suppose that a lawyer owes no fidelity to any one except his client and that the latter is the keeper of his professional conscience . . . . . . The high and honourable office of counsel would be degraded to that of a mercenary were he compelled to do the biddings of his client against the dictates of his conscience." The true duty of the lawyer to his client lies in perfect loyalty to the law and the means by which he can promote his client's interests are limited to the ascertainment and vindication of those rights which the law gives him. He is unfaithful to his professional duty, if he knowingly furthers his client's interest beyond the point of legal right, or by means of violation of the law, or even evasion of it. The profession exists to help people in securing their legal rights, not to aid them in devising ways of committing legal wrongs. The super-eminent obligation of the lawyer is thus to be loyal to the law before his

client. In the words of Chief Justice Cockburn, he ought " to reconcile the interests of his clients with the eternal interests of truth and justice."

By way of illustration, I may refer to a case that arose in the American courts. There the plaintiff suing in damages had been assaulted by the defendant in the presence of a sole witness. The witness was unwilling, without consideration, to give evidence of what he had seen. He addressed a letter to plaintiff's counsel in which the importance of his evidence as sole witness to the incident was adverted to. The writer went on to say that he could of course be subpœnæd, compelled to testify, but added : " But when a person is *made to speak*, it is easy for one to *forget* the most important part." He insisted upon a reward and a legal guarantee therefor. Eventually counsel guaranteed to pay a sum to the witness out of any moneys that might come into his hands in settlement of any judgment that might be recovered against the defendant. Upon these facts counsel was charged with professional misconduct. He sought to justify his action on the ground, amongst others, that, if compelled to testify, witness had threatened to forget what had happened, and that the writing of the letter for the purpose of securing truthful testimony was not " an act of malpractice nor any infraction of legal ethics." The Court in punishing counsel with an order of suspension said that counsel laboured under a mistaken notion that his duty to his client was superior to considerations of public policy and added that " attorney's duty to his client is a solemn obligation, but it has never been held that it is greater than law itself . However just the attorney believed his client's claims to be, he may not liquidate it by force of arms, by bribery, or any other unlawful means."

To turn to another peculiarity. The high and responsible duties of the profession of law lie in enforcing the law of the land, in explaining and applying it. We spend our lives as *Vidyarthis* in trying to learn this law which it is our business to declare to others and of whose profound secrets we are the seers. It is this intimate association with the scholarly frame of mind that is one of the spiritual factors in professional life which help to redeem it from commercialism.

Now what, in essence, is this law that we learn, that we may enforce, explain, apply and help to administer ; this law which is the working material of our incessant labours. Blackstone visualises it as employing " in its theory the noblest faculties of the soul " and exerting " in its practice the cardinal virtues of the heart." It is to be found not wholly in the volume of established laws or in the reasoning of judicial decisions or in the pages of Statute law. It is to be found, in the words of Sir Thames Craig, in the " Counsels of natural equity which are part of the birthright of man, those original instincts of Right which are inborn in his character and which spring, undefiled and unchangeable, from the ever-enduring authority of the conscience of mankind." In short, the essence of this law is, that it is the fruit of the constant striving of the human spirit after the Right. This unconscious inspiration and influence temper the practical outlook of the professional mind with a share of the detached austerity of the scholar and thereby save it from commercialism. It is to this aspect of the professional life that Lord Macmillan refers when he says : " The difference between a trade and a profession is that the trader frankly carries on this business primarily for the sake of pecuniary profits

while the members of a profession profess an art, their skill in which they no doubt place at the public service for a remuneration, adequate or inadequate, but which is truly an end in itself. The professional man finds his highest reward in his sense of his mastery of his subject, in the absorbing interest of the pursuit of knowledge for its own sake, and in the contribution which, by reason of his attainments, he can make to the promotion of general welfare. It is only by the liberality of our learning that we can hope to merit the place in public estimation which we claim and to render to the public the services which they are entitled to expect from us."

A third peculiar feature of the legal profession is that, in discharging his functions, every member of the legal profession is executing a public trust. To quote Justice Williams of Pennsylvania, " The Practice of the law is more than the private occupation of him who pursues it ; it is the duty of an office in which the Courts and the general public are deeply interested." Counsel are just as responsible to the public at large in the performance of their duties to the clients they serve, as the Judge is in the performance of his. Only in outward form does the Judge appear to discharge his obligations in a sense different from that in which counsel perform their respective duties. The profession holds a monopoly, enjoys a certain privilege and gains a certain status. This status and the attendant privileges are the gift of the community which creates or sanctions them. Professional privileges are thus held in public trust and if the client appears to be the person entitled to the performance of the relative duty it is only because he is a member of the community which created and sanctioned the privileges. As Forsyth puts it " He who has devoted himself to that profession which is as difficult as it is honourable ; who receives in his chamber the most confidential communications ; who directs by his counsel those who come to ask his advice and listen to him as though he were an oracle ; who constitutes himself the organ of those who find themsleves attacked in their persons, their honour, or their fortune ; who brings forward and gives efficiency to their demand, or repels the charges brought against them ; he, I say who does all this, must necessarily require the support of the public. By his knowledge, his talents, his morality, he ought to endeavour to win the confidence and the goodwill of his fellow citizens." This confidence and goodwill can be assured only by professional efficiency which marks the exact opposite of the commercialistic spirit. Counsel's ambition is, or ought to be, to realise the desire to give of the best of himself to the work which his client puts in his way and if ever the attitude of the profession to its work were to be that of giving as much as it pleased, or as little as it can, for the largest reward that it can exact, it would have proved a traitor to the high status which it enjoys as its due, lost its competency for service and forfeited its privileges. It would have forgotten its public trust and turned wholly to the least laudable ways of commercialism.

It is a matter of further interest that in the recent case of *Myers* v. *Elman*[1], the House of Lords have recognised a jurisdiction over practitioners which would embrace within its ambit the power to deal with certain transgressions of duty in relation to the Court savouring of a commercialistic spirit. This jurisdiction is independent of the power that the Court has to strike off from the rolls the name

1. (1940) A.C. 282.

of a practitioner or to suspend him for professional misconduct. It deals with the practitioner as an officer of the Court for breach of duty towards it and is both punitive and compensatory.

In *Myers* v. *Elman*[1], one of the charges laid against the Solicitor was that he prepared and permitted his client to make affidavits of documents which were inadequate and false. The original action in which the Solicitor is alleged to have done this was one in which the plaintiff successfully charged the defendants therein with conspiracy and fraud and obtained a decree for damages and costs. The plaintiff could recover nothing from the defendants and he applied to the Court to direct the Solicitors of the defendants personally to pay the costs adjudged against his clients, on the ground that he had been guilty of professional misconduct. Upon this, a question was raised about the jurisdiction of the Court to make in favour of a party an order against the Solicitor of the opposite party. The trial Judge, Singleton, J., held that as a result of a deliberate policy adopted in the Solicitor's office in the conduct of the defence, the Solicitor increased the plaintiff's difficulties, added to the expense and obstructed the interests of justice and was consequently guilty of professional misconduct as a Solicitor and an officer of the Court. He ordered the Solicitor to pay the costs decreed in the original action against his own clients and in favour of the opposite party. His Lordship said that the Solicitor owed a special duty to the Court as a helper in the administration of justice and that if he were asked by his client to do something which was inconsistent with his duty to the Court it was for him to point out that he could not do it, and, if necessary, to cease to act. The House of Lords confirmed this decision of Singleton, J. Viscount Maugham held that a Solicitor was not entitled to assist his clients in any way in dishonourable conduct in the course of the proceedings, and that he could not connive in a fraud and defeat the ends of justice. Lord Atkin stated that the Solicitor's act may well amount to conduct which is aiding and abetting a criminal in concealing his crime. Lord Wright described it as conduct which involved a failure on the part of the Solicitor to realise his duty to aid, in promoting in his own sphere, the cause of justice.

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1. (1940) A.C. 282.